IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9342 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KIRANBHAI W/O GULMAMAD NARAJA

Versus

COMMISSIONER OF POLICE

Appearance:

MS KRISHNA U MISHRA for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 12/12/2000

ORAL JUDGEMENT

#. The petitioner herein has challenged by way of this Special Civil Application under Article 226 of the Constitution his order of detention passed by the Police Commissioner, Rajkot City, Rajkot on 7.8.2000 in exercise of the powers conferred upon him under section 3(1) of

Gujarat Prevention of Anti-Social Activities Act 1985 (PASA Act for short). The petitioner came to be detained from 7.8.2000 in pursuance of the above said order.

#. The detaining authority placed reliance on 5 crimes registered against the petitioner from 1.2.1999 to 17.7.2000 under the Bombay Prohibition Act. The detaining authority also placed reliance on the papers of investigation made in the above said offence. From the above material the detaining authority came to the conclusion that the petitioner was dealing in illegal liquor and was bootlegger within the meaning of section 2(b) of the PASA ACt and hence the order impugned came to be passed.

#. Learned advocate Mrs. K.U.Mishra for the petitioner and learned AGP Mr. Uday Bhatt for the respondents were heard.

#. Various grounds were urged against the order of detention. It was vehemently urged that the right of the petitioner as guaranteed under Article 22(5) of the Constitution of India is jeopardised because certain documents are not provided to the petitioner and those documents are relied upon by the detaining authority.

#. When the matter was examined on factual aspect with reference to the above contentions it appears that the petitioner preferred a representation to the Home Department of the State Government against his detention on 11.8.2000 which was duly received by the concerned authority. Vide para 7 of the above said representation, copies of certain documents i.e. statements of the witnesses in the offences registered against the petitioner were demanded. In reply to the above said representation the Government i.e. concerned authority informed the petitioner that copies were already supplied to the petitioner . But on verifying the compilation served upon the petitioner, it clearly appears that these copies are not provided to the petitioner while serving the order of detention.

#. This necessarily denotes that the right of the petitioner as guaranteed by Article 22(5) of the Constitution of India is prejudiced to the extent of making effective representation and for these reasons further detention of the detenu is vitiated resulting in setting aside the order of detention passed against the petitioner.

#. In view of the above discussion the order of

detention passed against the petitioner by the Police Commissioner, Rajkot City, Rajkot on 7.8.2000 is herehy ordered to be set aside and quashed. The petitioner-Kiranben wife of Gulmamad Naraja is hereby ordered to be released forthwith if she is not required to be detained for any other purpose. Rule is made absolute. Direct service permitted.

(J.R.Vora.J)

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